

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
SOUTHERN DIVISION

<p>RANDY COWHERD,</p> <p>Plaintiff,</p> <p>vs.</p> <p>JERAMME LARSON, CORRECTION OFFICER, MDSP; BRITTANY ULMER, UNIT STAFF, MDSP; BOB DOOLEY, WARDEN, SDSP; AND UNKNOWN ASSISTANT WARDEN, SDSP;</p> <p>Defendants.</p>	<p>4:18-CV-04068-KES</p> <p>ORDER GRANTING MOTION TO PROCEED IN FORMA PAUPERIS ON APPEAL</p>
--	--

Plaintiff, Randy Cowherd, is an inmate at the Rapid City Community Work Center in Rapid City, South Dakota. On July 12, 2019, Cowherd filed a notice of appeal and motion to appeal without prepayment of filing fees. Dockets 17, 18.

Under the Prison Litigation Reform Act (PLRA), a prisoner who “files an appeal . . . [is] required to pay the full amount of a filing fee.” 28 U.S.C. § 1915(b)(1). This obligation arises “ ‘the moment the prisoner . . . files an appeal.’ ” *Henderson v. Norris*, 129 F.3d 481, 483 (8th Cir. 1997) (quoting *In re Tyler*, 110 F.3d 528, 529–30 (8th Cir. 1997)). Therefore, “ ‘[w]hen an inmate seeks pauper status, the only issue is whether the inmate pays the entire fee at the initiation of the proceedings or over a period of time under an installment

plan.’ ” *Id.* (quoting *McGore v. Wrigglesworth*, 114 F.3d 601, 604 (6th Cir. 1997)). “[P]risoners who appeal judgments in civil cases must sooner or later pay the appellate filing fees in full.” *Id.* (citing *Newlin v. Helman*, 123 F.3d 429, 432 (7th Cir. 1997)).

*Henderson* sets forth the procedures to be used to assess, calculate, and collect appellate filing fees in compliance with the Prison Litigation Reform Act of 1995 (PLRA). *Id.* at 483. Plaintiff has not filed the requisite paperwork to proceed in forma pauperis or paid the appellate filing fee. “If the district court does not receive a certified copy of the prisoner’s prison account within 30 days of the notice of appeal, it shall calculate the initial appellate filing fee at \$35 or *such other reasonable amount warranted by available information[.]*” *Id.* at 485 (emphasis added). An initial partial filing fee of \$35 is reasonable.

Thus, it is ORDERED:

1. Cowherd’s motion to appeal without prepayment of fees (Docket 18) is granted.
2. Cowherd must pay an initial partial filing fee of \$35 by September 3, 2019, made payable to the Clerk, U.S. District Court.
3. The institution having custody of Cowherd is directed that whenever the amount in Cowherd’s trust account, exclusive of funds available to him in his frozen account, exceeds \$10.00, monthly payments that equal 20 percent of the funds credited the preceding month to the Cowherd’s trust account shall be forwarded to the U.S. District Court

Clerk's Office under to 28 U.S.C. § 1915(b)(2), until the \$505 appellate filing fee is paid in full.

DATED this 2nd day of August, 2019.

BY THE COURT:

/s/*Karen E. Schreier*

KAREN E. SCHREIER  
UNITED STATES DISTRICT JUDGE